

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1342
96TH GENERAL ASSEMBLY

5342L.04P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 511, RSMo, by adding thereto six new sections relating to settlement offers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 511, RSMo, is amended by adding thereto six new sections, to be
2 known as sections 511.800, 511.802, 511.804, 511.806, 511.808, and 511.810, to read as
3 follows:

511.800. As used in sections 511.800 to 511.810, the following terms shall mean:

2 **(1) "Claim", a request, including a counterclaim, cross-claim, or third-party claim,**
3 **to recover monetary damages;**

4 **(2) "Claimant", a person making a claim;**

5 **(3) "Defendant", a person from whom a claimant seeks recovery on a claim,**
6 **including a counterdefendant, cross-defendant, or third-party defendant;**

7 **(4) "Governmental unit", the state, a unit of the state, or a political subdivision of**
8 **this state;**

9 **(5) "Litigation costs", money actually spent and obligations actually incurred that**
10 **are directly related to the case in which a settlement offer is made. Litigation costs include:**

11 **(a) Court costs;**

12 **(b) Reasonable fees for not more than two testifying expert witnesses; and**

13 **(c) Reasonable attorney's fees.**

511.802. 1. The settlement procedures provided in sections 511.800 to 511.808 shall
2 **apply only to claims for monetary relief.**

3 **2. Sections 511.800 to 511.810 do not apply to:**

4 **(1) A class action;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 5 (2) A shareholder's derivative action;
- 6 (3) An action by or against a governmental unit;
- 7 (4) An action brought under chapters 210, 211, 451, 452, 453, 454, and 455;
- 8 (5) An action to collect workers' compensation benefits under chapter 287; or
- 9 (6) An action filed in small claims court.

10 3. Sections 511.800 to 511.810 do not apply until a party files a declaration that the
11 settlement procedure authorized by sections 511.800 to 511.810 is available only in relation
12 to the party that filed the declaration and to the parties that make or receive offers of
13 settlement in relation to such party that filed the declaration.

14 4. Sections 511.800 to 511.810 do not limit or affect the ability of any person to:

15 (1) Make an offer to settle or compromise a claim that does not comply with
16 sections 511.800 to 511.810; or

17 (2) Offer to settle or compromise a claim to which sections 511.800 to 511.810 do
18 not apply.

19 5. An offer to settle or compromise that is not made under sections 511.800 to
20 511.810 do not apply and do not entitle the offering party to recover litigation costs under
21 sections 511.800 to 511.810.

 511.804. A settlement offer shall:

- 2 (1) Be in writing;
- 3 (2) State that it is made under sections 511.800 to 511.810;
- 4 (3) State the terms by which the claims may be settled;
- 5 (4) State a deadline by which the settlement offer shall be accepted; and
- 6 (5) Be served on all parties to whom the settlement offer is made.

 511.806. 1. If a settlement offer is made and rejected and the judgment to be
2 rendered will be significantly less favorable to the rejecting party than was the settlement
3 offer, the offering party shall recover litigation costs from the rejecting party.

4 2. A judgment shall be significantly less favorable to the rejecting party than is the
5 settlement offer if:

6 (1) The rejecting party is a claimant and the award will be less than fifty percent
7 of the rejected offer; or

8 (2) The rejecting party is a defendant and the award will be more than one hundred
9 fifty percent of the rejected offer.

10 3. The litigation costs that may be recovered by the offering party under this
11 section are limited to those litigation costs incurred by the offering party after the date the
12 rejecting party rejected the settlement offer.

13 **4. The litigation costs that may be awarded under sections 511.800 to 511.810 shall**
14 **not be greater than an amount computed by:**

15 **(1) Determining the sum of:**

16 **(a) Fifty percent of the economic damages to be awarded to the claimant in the**
17 **judgment;**

18 **(b) One hundred percent of the noneconomic damages to be awarded to the**
19 **claimant in the judgment; and**

20 **(c) One hundred percent of the exemplary or additional damages to be awarded to**
21 **the claimant in the judgment; and**

22 **(2) Subtracting from the amount determined under subdivision (1) of this**
23 **subsection the amount of any statutory or contractual liens in connection with the**
24 **occurrences or incidents giving rise to the claim.**

25 **5. If a claimant or defendant is entitled to recover fees and costs under another law,**
26 **such claimant or defendant shall not recover litigation costs in addition to the fees and**
27 **costs recoverable under the other law.**

28 **6. If a claimant or defendant is entitled to recover fees and costs under another law,**
29 **the court shall not include fees and costs incurred by such claimant or defendant after the**
30 **date of rejection of the settlement offer when calculating the amount of the judgment to be**
31 **rendered under subsection 1 of this section.**

32 **7. If litigation costs are to be awarded against a claimant, such litigation costs shall**
33 **be awarded to the defendant in the judgment as an offset against the claimant's recovery**
34 **from such defendant.**

511.808. 1. In a civil proceeding, on a trial court's granting or denial, in whole, of
2 **a motion to dismiss for failure to state a claim upon which relief can be granted, the court**
3 **may award costs and reasonable and necessary attorney's fees to the prevailing party that**
4 **the court determines are equitable and just.**

5 **2. By February first each year, the Missouri supreme court shall submit an annual**
6 **report to the general assembly regarding the number of cases and dollar amounts involved**
7 **in each case which are dismissed under subsection 2 of this section.**

511.810. 1. Certain litigation costs may be awarded against a party who rejects an
2 **offer made substantially in accordance with this section to settle a claim for monetary**
3 **damages, including a counterclaim, cross-claim, or third-party claim.**

4 **2. (1) A settlement offer under this section shall not be made until a party files a**
5 **declaration invoking this section. When a party files such a declaration, an offer or offers**
6 **may be made under this section to settle only those claims by and against such party. The**

7 **declaration shall be filed no later than forty-five days before the case is set for conventional**
8 **trial on the merits.**

9 **(2) A settlement offer shall:**

10 **(a) Be in writing;**

11 **(b) State that it is made under sections 511.800 to 511.810;**

12 **(c) Identify the party or parties making the offer and the party or parties to whom**
13 **the offer is made;**

14 **(d) State the terms by which all monetary claims, including any attorney fees,**
15 **interest, and costs that would be recoverable up to the time of the offer, between the offeror**
16 **or offerors on the one hand and the offeree or offerees on the other may be settled;**

17 **(e) State a deadline, no sooner than sixty days after the offer is served, by which the**
18 **offer shall be accepted;**

19 **(f) Be served on all parties to whom the offer is made.**

20 **(3) An offer may be made subject to reasonable conditions, including the execution**
21 **of appropriate releases, indemnities, and other documents. An offeree may object to a**
22 **condition by written notice served on the offeror before the deadline stated in the offer.**
23 **A condition to which no such objection is made is presumed to have been reasonable.**
24 **Rejection of an offer made subject to a condition determined by the trial court to have been**
25 **unreasonable cannot be the basis for an award of litigation costs under this section.**

26 **(4) An offer shall not include nonmonetary claims and other claims to which this**
27 **section does not apply.**

28 **(5) An offer shall not be made:**

29 **(a) Before a party's declaration is filed;**

30 **(b) Within sixty days after the appearance in the case of the offeror or offeree,**
31 **whichever is later;**

32 **(c) Within sixty days before the date the case is set for a conventional trial on the**
33 **merits; except that, an offer may be made within that period if it is in response to, and**
34 **within seven days of, a prior offer.**

35 **(6) A party may make an offer after having made or rejected a prior offer. A**
36 **rejection of an offer is subject to imposition of litigation costs under this section only if the**
37 **offer is more favorable to the offeree than any prior offer.**

38 **3. (1) An offer may be withdrawn before it is accepted. Withdrawal is effective**
39 **when written notice of the withdrawal is served on the offeree. Once an unaccepted offer**
40 **has been withdrawn, it cannot be accepted or be the basis for awarding litigation costs**
41 **under this section.**

42 **(2) An offer that has not been withdrawn may be accepted only by written notice**
43 **served on the offeror by the deadline stated in the offer. When an offer is accepted, the**
44 **offeror or offeree may file the offer and acceptance and may move the court to enforce the**
45 **settlement.**

46 **(3) An offer that is not withdrawn or accepted is rejected. An offer may also be**
47 **rejected by written notice served on the offeror by the deadline stated in the offer.**

48 **(4) An offer made before an offeror joins another party or designates a responsible**
49 **third party shall not be the basis for awarding litigation costs under this section against an**
50 **offeree who files an objection to the offer within fifteen days after service of the offeror's**
51 **pleading or designation.**

52 **4. (1) If a settlement offer made under this section is rejected, and the judgment**
53 **to be awarded on the monetary claims covered by the offer is significantly less favorable**
54 **to the offeree than was the offer, the court shall award the offeror litigation costs against**
55 **the offeree from the time the offer was rejected to the time of judgment.**

56 **(2) A judgment award on monetary claims is significantly less favorable than an**
57 **offer to settle those claims if:**

58 **(a) The offeree is a claimant and the judgment would be less than fifty percent of**
59 **the offer; or**

60 **(b) The offeree is a defendant and the judgment would be more than one hundred**
61 **fifty percent of the offer.**

62 **(3) Litigation costs are the expenditures actually made and the obligations actually**
63 **incurred, directly in relation to the claims covered by a settlement offer under this section,**
64 **for the following:**

65 **(a) Court costs;**

66 **(b) Reasonable fees for not more than two testifying expert witnesses; and**

67 **(c) Reasonable attorney fees.**

68 **(4) The litigation costs that may be awarded under this section shall not exceed the**
69 **following amount:**

70 **(a) The sum of the noneconomic damages, the exemplary or additional damages,**
71 **and one-half of the economic damages to be awarded to the claimant in the judgment;**
72 **minus**

73 **(b) The amount of any statutory or contractual liens in connection with the**
74 **occurrences or incidents giving rise to the claim.**

75 **(5) A party who is entitled to recover attorney fees and costs under another law**
76 **may not recover those same attorney fees and costs as litigation costs under this section.**

77 **(6) A party against whom litigation costs are awarded shall not recover attorney**
78 **fees and costs under another law incurred after the date the party rejected the settlement**
79 **offer made the basis of the award.**

80 **(7) Litigation costs awarded to a defendant shall be made a setoff to the claimant's**
81 **judgment against the defendant.**

82 **5. (1) On motion and for good cause shown, the court may, by written order made**
83 **before commencement of trial on the merits, modify the time limits for filing a declaration**
84 **under subdivision (1) of subsection 2 of this section or for making an offer.**

85 **(2) On motion and for good cause shown, a party against whom litigation costs are**
86 **to be awarded may conduct discovery to ascertain the reasonableness of the costs**
87 **requested. If the court determines the costs to be reasonable, it shall order the party**
88 **requesting discovery to pay all attorney fees and expenses incurred by other parties in**
89 **responding to such discovery.**

90 **(3) The court shall, upon request, conduct a hearing on a request for an award of**
91 **litigation costs, at which the affected parties may present evidence.**

92 **6. Evidence relating to an offer made under this section is not admissible except for**
93 **purposes of enforcing a settlement agreement or obtaining litigation costs. The provisions**
94 **of this section shall not be made known to the jury by any means.**

95 **7. This section does not apply to any offer made in a mediation or arbitration**
96 **proceeding. A settlement offer not made under this section, or made in an action to which**
97 **this section does not apply, shall not be the basis for awarding litigation costs under this**
98 **section. This section does not limit or affect a party's right to make a settlement offer that**
99 **does not comply with this section, or in an action to which this section does not apply.**

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